



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: December 7, 2010

TO: Mayor and Councilmembers

FROM: Administration Division, Finance Department

SUBJECT: State Video Franchise Agreement With Cox Communications

RECOMMENDATION: That Council:

- A. Hear a report from staff on the new State video franchise laws which authorize Cox Communications to provide cable television services to residents in the City of Santa Barbara pursuant to a state franchise;
- B. Introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Establishing a Franchise Fee, a Fee for Public, Educational, and Government Access Purposes (PEG Fee), and a Schedule of Monetary Penalties for Material Breaches of Video Franchise Standards by State Video Franchise Holders within the City of Santa Barbara;
- C. Adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Establishing a Public, Education, and Government Access Fee on State Franchised Video Service Providers for Use in Providing Public, Educational, and Government Access Video Services;
- D. Authorize staff to request an additional educational access channel from Cox Communications for higher education purposes; and
- E. Authorize the City Administrator to enter into an agreement with the University of California Santa Barbara (UCSB), in a form of agreement acceptable to the City Attorney, for the management and programming of an additional local educational access channel.

DISCUSSION:

State Video Franchise with Cox Communications

Cox Communications currently operates a regional cable system in the Santa Barbara South Coast region, providing cable television service to the cities of Santa Barbara, Goleta and Carpinteria and the nearby unincorporated regions of the County of Santa Barbara. Each of the local jurisdictions has entered into non-exclusive cable franchise agreements with Cox allowing it to operate and use the public rights-of-way for the provision of cable services in the region.

The City's cable franchise agreement with Cox Communications expires December 10, 2010. In October 2010, Cox filed an application with the California Public Utilities Commission (CPUC) for the CPUC permission to provide cable services in the City of Santa Barbara under the authority of state law provisions enacted in 2006. On November 1, 2010, the CPUC approved Cox's application to provide cable services in the City of Santa Barbara.

Under the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), the state PUC has authority to grant local franchises to video providers for the provision of video services in local jurisdictional areas. DIVCA was sponsored by telephone companies in order to gain easy and quick access to local video and cable TV markets without having to negotiate directly with cities and counties for use of the public right-of-way, as was required in the past. As a result, DIVCA provides for state video franchises in California very much like what has been allowed for telephone companies, rather than local cable TV franchise agreements, and it establishes state-wide standards for all video and cable TV franchises, regardless of whether video services are provided through fiber-optic cables or over telephone wires, (like Verizon's FiOS service or AT&T's U-Verse) or by way of a cable. It should be noted that Cox is the only current video provider in the Santa Barbara South Coast region at this time and neither Verizon nor AT&T offer video service in our region yet.

DIVCA also specifies standards such as system technical requirements, a 10-year maximum franchise term, and requires non-discriminatory access to video services within a region regardless of neighborhood income. Under the state franchise, Cox will continue to pay the City franchise fees equal to 5% of the gross cable revenues for use of the public right-of-way and provide the three PEGaccess channels on its cable system. Also under the new state agreement, the City will continue to be responsible for the enforcement of customer service and protection standards. With respect to the major aspects of a video franchise agreement, the terms of a state franchise are similar to the City's expiring agreement.

However, there are several substantive changes. Under a state video franchise, Cox is no longer required to provide free intranet communication services between City facilities, like City Hall and the local community centers. Additionally, cable television service to City facilities will no longer be provided free of charge. The City is currently working with Cox to determine if these services would continue to be provided to the City free of charge in exchange for proposed changes to the location in the channel numbering spectrum of the PEG channels pursuant to a separate agreement between Cox and the City. In working with Cox, staff understands that there will be no interruption of either intranet or cable television services while this issue is being negotiated outside of the context of state franchise agreement.

Another change under the state franchise is that Council must adopt a schedule of penalties for any material breach of the state franchise standards in order to impose financial penalties upon the video service provider if Council chooses to do so. The

ordinance as introduced today establishes penalties for material breaches consistent with the limits established under DIVCA.

The last substantive change under a state franchise agreement pertains to funding for PEG facilities and equipment. Under the expiring franchise, the City negotiated a one-time payment of \$250,000 for government access capital for the first three years of the franchise and a \$35,000 Cox contribution annually thereafter. These funds have allowed the City to maintain a high level of government access programming to City residents through ongoing investment in the City TV facility and equipment. City TV staff has identified capital needs over the next several years totaling \$160,000 in order to maintain current levels of service.

Under DIVCA, if Council chooses to continue to impose PEG capital funding requirements on video service providers, it is required to adopt an ordinance establishing a PEG fee, limited in most cases to 1% of gross cable revenues. The attached ordinance proposed for introduction today establishes the City PEG fee of "up to 1%" and gives Council the flexibility to separately adopt an annual PEG fee as part of the annual budget cycle.

In the past, the PEG capital funding was absorbed by Cox and not passed through on subscriber bills. However, if Council chooses to implement a PEG fee, then Cox may elect to pass through the charge directly to subscribers, in which case the PEG fee would show up as a new charge on cable bills, expressly allowed under DIVCA.

Staff recommends that PEG funding for capital equipment be included in the new State franchise and the initial amount be established at 0.25% of gross revenues as contained in the resolution before Council today. It is estimated that a PEG fee of 0.25% would generate approximately \$25,000 for the remainder of Fiscal Year 2011 and partially replace the \$35,000 previously received from Cox in January of each year. On an ongoing basis, the 0.25% would generate \$50,000 per year. Based on staff estimates, if Cox chooses to pass through the charge directly to subscribers the PEG fee could result in an additional charge of 20 to 25 cents on average to cable customers on their cable bills.

Request for Additional Educational Access Channel Under State Video Franchise

Under the current City franchise agreement, Cox provides the City three public, education and government (PEG) access channels on its cable system. The government access channel (channel 18) is managed and programmed by the City's own City TV operation in the City Administrator's Office. The public and educational access channels (channels 17 and 21, respectively) are managed and programmed by The Santa Barbara Channels, under a separate grant agreement with the City. These three PEG access channels will continue to be provided under the new state DIVCA franchise.

Although the City does not currently need an additional government or public access channel, we have received a request from the University of California Santa Barbara (UCSB) for an additional educational access channel to be used for UCTV and other higher education programming produced by UCSB for the benefit of the Santa Barbara South Coast region.

UCTV is non-commercial, 24/7 programming comprised of educational, informational, and cultural programs from the University of California's ten campuses, three national labs, and other affiliated institutions. Programs include documentaries, lectures, symposiums, artistic performances and other events. Programs cover a broad range of general interest topics, such as science, health, humanities, education issues, and public affairs. It also provides programming specifically supporting educators to enrich the classroom experience for K-12 students.

Section 5870(d)(1) of DIVCA provides as follows:

"the holder [of a state franchise] shall provide an additional PEG channel when the non-duplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television."

The Santa Barbara Channels has documented that this criterion with regard to amount of programming on the existing educational access channel, channel 21, has been met.

Staff is supportive of UCSB's request and has spoken to Cox regarding the activation of an additional educational access channel. Cox indicates that they will accommodate the request and may broadcast the channel throughout the entire South Coast region, not just to subscribers within the boundaries of the City of Santa Barbara. There may be initial costs to connect UCSB with Cox's cable system via fiber connection or ongoing charges to transport the signal onto Cox's system. Any initial connection or ongoing transport costs would be borne by UCSB.

Attached is a copy of a letter from Henry Yang, Chancellor of University of California Santa Barbara, requesting the additional channel for UCTV programming and a letter from Keri Stokstad, Executive Director of the Santa Barbara Channels, verifying that the existing educational access channel 21 has been programmed with locally-produced programming exceeding 56 hours per week on average per quarter.

ATTACHMENTS: 1. Letter from Henry Yang, Chancellor, UCSB, dated November 16, 2010
2. Letter from Keri Stokstad, Executive Director, The Santa Barbara Channels, dated November 15, 2010

PREPARED BY: Jill Taura, Treasury Manager

SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

SANTA BARBARA

Office of the Chancellor
Santa Barbara, CA 93106-2030
Phone: (805) 893-2231
Fax: (805) 893-8717
<http://www.ucsb.edu>

November 16, 2010

The Honorable Helene Schneider
City of Santa Barbara
Post Office Box 1990
Santa Barbara, CA 93102-1990

Dear Helene:

Through some very cooperative discussions with your staff, it has come to our attention that the City of Santa Barbara Cable Franchise Agreement with Cox Communications is expiring in December and a new Agreement will be under the jurisdiction of the State Public Utilities Commission. We believe this presents an exciting opportunity for UC Santa Barbara and University of California Television (UCTV) to bring educational, non-commercial programming to our Santa Barbara community.

Specifically, it is our understanding that the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) "provides that a holder of a state franchise shall provide an additional PEG channel when the non-duplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television." Attached is a copy of a letter from SB Channels verifying that this criterion has been met.

UCTV brings programming from the University of California's ten campuses, three national labs, and other affiliated institutions via cable, satellite, and an online network. The range of educational, informational, and cultural events that take place on our UCSB campus and around the UC system is truly exceptional, and a dedicated higher education channel presents an opportunity for the entire Santa Barbara community to be part of this dynamic learning environment. Given Santa Barbara's richness and diversity, we believe the community would be well served by a cable channel focused on higher education programming.

This is an important priority for the campus, and we believe the timing, in addition to the clear need for another education channel, make this a win-win for the campus and the City of Santa Barbara. We humbly thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry".

Henry T. Yang
Chancellor

Attachment

cc: Jim Armstrong
Jill Taura



The Santa Barbara Channels

November 15, 2010

Glenn "Gene" Lucas
Executive Vice Chancellor
University of California, Santa Barbara
Cheadle Hall, Room 5105
Santa Barbara, CA 93116

Dear Gene:

The Santa Barbara Channels manages the City's Public and Education Channels, 17 and 21. The Education Channel is programmed 24 hours a day, 7 days a week. It is our understanding that the University of California Santa Barbara is pursuing an additional PEG channel for higher education programming. Additionally, we understand the programming would be provided by University of California Television (UCTV) in partnership with the Santa Barbara campus. In pursuit of this effort, we have been asked to provide confirmation of our current programming as it relates to the Digital Infrastructure and Video Competition Act of 2006.

Specifically, under the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), section 5870 (d) (1), 2780 (d) (1), "The holder shall provide an additional PEG channel when the non-duplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television."

We have carefully reviewed pertinent sections of the Act, and have determined that the current programming on the existing PEG Channels is in excess of the 56 hours per week as defined under DIVCA. Consequently, it our understanding that Cox Communications is required to provide an additional PEG channels to the City of Santa Barbara upon request.

I believe the Santa Barbara community would be well served by a designated channel for higher education programming. If I can be of assistance as the University embarks on this new venture, please do not hesitate to contact me.

Cordially,

Keri Stokstad
Executive Director
The Santa Barbara Channels